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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/829,894	04/10/2001	Robert Barritz	P/1318-127	8555
2352	7590	01/30/2004	EXAMINER	
OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403			RHODE JR, ROBERT E	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 01/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/829,894

Applicant(s)

BARRITZ, ROBERT

Examiner

Rob Rhode

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 April 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Drawings

The drawings filed on 04/10/2001 are acceptable subject to correction of the informalities indicated on the attached "Notice of Draftperson's Patent Drawing Review," PTO-948. In order to avoid abandonment of this application, correction is required in reply to the Office action. The correction will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 2, 3 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In Claim 1, the word "substantially" is a relative word, which renders the claims indefinite. The word "substantially" is not defined by the claim(s), the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably appraised of the scope of the invention. For examination purposes the word "substantially" will be treated as a generic word. In Claim 2, the word "semi-automatically" is a relative word, which renders the claims indefinite. The word "semi-automatically" is not defined by the claim(s), the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would

not be reasonably appraised of the scope of the invention. For examination purposes the word "semi-automatically" will be treated as a generic word. Additionally in claim 3, the word "optimized " is a relative word, which renders the claims indefinite. The word " optimized " is not defined by the claim(s), the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably appraised of the scope of the invention. For examination purposes the word "optimized" will be treated as a generic word. Moreover and regarding claim 8, the word "loading " is a relative word, which renders the claims indefinite. The word " loading " is not defined by the claim(s), the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably appraised of the scope of the invention. For examination purposes the word "loading" will be treated as a generic word.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 4, 6 – 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Storefrontpro.com web pages captured via the WayBackMachine (archieve.org) [hereafter referred to as "Storefront"] in view of Peckover (US 6,119,101).

Regarding claim 1, Storefront teaches a website constructor, comprising: a website organization subsystem that defines a look and feel of the website (see at least Pages 1 and 2); a graphic design subsystem that creates at least one website layout and features setup (see at least Page 2 and 5); and a website builder that builds the website based on the criteria and conditions that have been setup by the foregoing subsystems (see at least Pages 1 – 9). In addition and regarding claims 2 and 3, Storefront teaches wherein the system is operable semi-automatically (Pages 1, 2 and 8) and in which the website is optimized for a retail operation (Page 1). Additionally and regarding claim 4, Storefront teaches the website constructor, in which merchandise information comprises at least two of the following merchandise parameters that are selected from the group consisting of: product code, UPC code, SKU code, product description, retail price, product style, product color, product size, product ordering information, product incentive program, product image, and product tags (Pages 1, 2 and 4). Moreover and regarding claim 7, Storefront teaches a website constructor, in which the website organization subsystem defines the look and feel of the website by reference to one or more organization parameters selected from the parameter group consisting of: category; manufacturer; promotions; close-out; product appearance; and tags representing the begin and end dates for the placement of merchandise on the website (Pages 4, 5, 8 and 9).

However, Storefront does not specifically disclose and teach a selection criteria subsystem that establishes a selection criteria for merchandise selection; a merchandise selection subsystem that selects merchandise that matches the selection criteria, the merchandise selection subsystem being based on merchandise made available by a plurality of vendors; a merchandise information downloading subsystem that downloads substantially automatically, from a plurality of vendors of merchandise, merchandise information defining the merchandise that has been selected by the merchandise selection subsystem (see at least Figures 40 and 41).

On the other hand, Peckover does teach a selection criteria subsystem that establishes a selection criteria for merchandise selection (see at least Abstract, Col 11, lines 20 - 36 and Figures 1, 2, 4A, 11, 40 and 41); a merchandise selection subsystem that selects merchandise that matches the selection criteria, the merchandise selection subsystem being based on merchandise made available by a plurality of vendors (see at least Figures 40 – 41); a merchandise information downloading subsystem that downloads substantially automatically, from a plurality of vendors of merchandise, merchandise information defining the merchandise that has been selected by the merchandise selection subsystem (see at least Figures 40 – 41). Moreover:

regarding claim 6, Peckover teaches in which the selection criteria comprises at least two parameters selected from the parameter group consisting of: category;

subcategory; manufacturer; vendor; promotions; close-out; starting date and ending date of seasonal merchandise (Figures 40 and 41).

regarding claim 8, Peckover teaches in which the merchandise selection subsystem enables a user of the website constructor to control downloading of merchandise information in a manner which enables: acceptance or rejection of marketing or merchandise information based on the selection criteria; selection of purchase orders, pricing schedules, and delivery schedules; and specification of loading information (Col 11, lines 7 – 22).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the constructor of Storefront with a selection criteria subsystem and a merchandise selection subsystem of Peckover to have enabled A website constructor, comprising: a selection criteria subsystem that establishes a selection criteria for merchandise selection; a website organization subsystem that defines a look and feel of the website; a graphic design subsystem that creates at least one website layout and features setup; a merchandise selection subsystem that selects merchandise that matches the selection criteria, the merchandise selection subsystem being based on merchandise made available by a plurality of vendors; a merchandise information downloading subsystem that downloads substantially automatically, from a plurality of vendors of merchandise, merchandise information defining the merchandise that has been selected by the merchandise selection subsystem; and a website builder that

builds the website based on the criteria and conditions that have been setup by the foregoing subsystems – in order to provide a capability for reduced time by online merchants in maintaining and updating their site. In this manner, the satisfaction of current users of the site/capabilities will increase due to the relative ease of constructing and updating their online sites, which will increase the probability that they will recommend the solution to others.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Storefront and Peckover as applied to claim 4 above, and further in view of Conklin (US 6,332,135 B1).

The combination of Storefront and Peckover substantially disclose and teach the applicant's invention.

However, the combination does not specifically disclose and teach a website constructor, in which the merchandise information is provided in Extensible Markup Languages (XML).

On the other hand and regarding claim 5, Conklin teaches a website constructor, in which the merchandise information is provided in Extensible Markup Languages (XML) [see at least Abstract and Col 20, line 37].

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the website constructor of Storefront and Peckover with a system/constructor incorporating XML. In this regard, the site will be able to interoperate with other vendors/suppliers without complex software – which will increase the ease of operation such as incorporating merchandise information from vendors. With this, the online merchant's can rapidly and easily incorporate information such as merchandise catalogs from numerous merchandisers, which can offer significant cost savings.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rob Rhode whose telephone number is 703.305.8230. The examiner can normally be reached on M-F 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Smith can be reached on 703.308.3588. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.306.1113.

RER


Jeffrey A. Smith
Primary Examiner

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